IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

TRC.No. 154 of 2003()

TA.185/2002 of KERALA S.T.A.TRIBUNAL,ADDL.BENCH,PALAKKAD
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REVISION PETITIONER:

M/S. MEPPADAM RUBBER FACTORY,
THANIKUDAM, THRISSUR DISTRICT, REPRESENTED
BY ITS PARTNER K.K.JAMALUDEEN

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON
SMT.MEERA .MENON

RESPONDENT:

STATE OF KERALA.

BY SPL.G.P. (TAXES) SRI V.V.ASHOKAN

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

T.R.C.No.154 of 2003

Dated, this the 14th day of June, 2007

ORDER

H.L. DATTU, CJ.

This revision petition is under the provisions of the Kerala General Sales Tax Act. The assessee is a partnership firm and registered as a small scale industrial unit. It is engaged in the manufacture and sale of centrifuged latex out of field latex purchased by it.

2. The assessee had filed its annual returns for the assessment year 1995-96 before the assessing authority and in that had claimed exemption on the purchase turnover of the field latex. The assessing authority, while concluding the assessments, has rejected the claim of the assessee and has levied tax on the purchase turnover of the field latex under sec.5 of the Act.

3. Aggrieved by the said order, the assessee had filed an appeal before the first appellate authority. In that appeal the assessee did not get any favourable orders.

4. Aggrieved by the said order the assessee had filed a second appeal before the Tribunal. Apart from others, the assessee had claimed exemption by pressing into service the notification issued by the State Government in S.R.O.No.1727 of 1993, on the ground that field latex and centrifuged latex are commercially two different commodities. This

claim of the assessee is rejected by the Tribunal by its order dt. 20.11.2002.

5. Aggrieved by the said order passed by the Tribunal, the assessee is before us in this revision petition filed under sec.41 of the Act. The assessee has raised the following two questions of law. They are as under:

> "A. Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in confirming the turnover eligible for exemption as fixed by the assessing authority?
> B. Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal gone wrong in failing to note that in any event, the entire purchase turnover is exempted under the provisions of Entry 25 to Schedule III to the notification SRO 1727/93 as held by this Hon'ble Court in M/s. Periyar Latex Ltd. vs. State of Kerala (2002) 10 KTR 60?"

6. At the time of hearing of the revision petition, the learned counsel for the assessee has raised yet another question of law, that is:

> Whether the assessee is eligible for exemption in view of the notification of the State Government in SRO No.695 of 2003?

7. The first question that the assessee has raised, in our opinion, is a pure question of fact. This court would get the power to revise an order passed by the Tribunal only if the Tribunal has failed to

decide a question of law or has erroneously decided the question of law. In our view, so far as the first question of law raised by the assessee is concernd, since it is a pure question of fact, we cannot be interfering with the finding of the Tribunal on that issue.

8. In so far as the second question of law framed by the assessee is concerned, in our opinion, the said question requires to be answered against the assessee in view of what has been said by a Full Bench of this Court in the case of ***Kurian Abraham (P) Ltd. v. Asst. Commissioner (ASSMT) II - 2004 (1) KLT 498.*** In that view of the matter, the second question of law raised by the assessee requires to be answered in favour of the Revenue and against the assessee.

9. So far as the third question of law raised by the learned counsel for the assessee at the time of hearing of this revision petition is concerned, in our opinion, the same requires to be considered by the Tribunal at the first instance, since, the Tribunal is the last fact finding authority. Therefore, we intend to remit the matter to the Tribunal to consider whether the assessee is entitled to any benefit under the notification issued by the State Government, S.R.O. No.695 of 2003. We hasten to add that, normally, this Court will not permit an assessee to raise an issue for the first time which is not raised before the Tribunal. But, taking into consideration the fervent plea made by the assessee's counsel and the financial constraints pleaded we have entertained this issue. This

concession of ours to the assessee shall not be treated as a precedent in any other case.

10. In view of the above, the following:

Order

This revision petition is disposed of. The questions of law raised by the assessee is answered against the assessee and in favour of the Revenue. In so far as the third question of law is concerned, the same is remitted back to the Tribunal with a direction to restore the appeal filed by the assessee and decide whether the assessee is entitled for exemption under the Government notification SRO No. 695/2003 dated 25.7.2003.

C.M.P.No.2078/2003 will stand dismissed. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK